

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE AUTOMOTIVE PARTS ANTITRUST LITIGATION	CASE NO. 12-MD-02311  HON. MARIANNE O. BATTANI
In Re: OCCUPANT SAFETY SYSTEMS CASES	
THIS RELATES TO:  ALL DIRECT PURCHASER ACTIONS	2:12-cv-00601-MOB-MKM  2:16-cv-10002-MOB-MKM

**SETTLEMENT CLASS COUNSEL’S REPORT ON DISSEMINATION  
OF NOTICE OF PROPOSED SETTLEMENTS WITH TOKAI RIKA AND  
TOYODA GOSEI DEFENDANTS AND CLASS MEMBERS’ RESPONSE**

Settlement Class Counsel submit the following report concerning the dissemination of notice pursuant to this Court's Order dated April 25, 2018 (2:12-cv-00601, Doc. No. 156) (the “Notice Order”), and Settlement Class members’ response to the notice program. As described more fully below, notice was mailed to 1,342 potential Settlement Class members and published in accordance with the Notice Order. Three requests for exclusion from the Tokai Rika Settlement Class and one request for exclusion from the Toyoda Gosei Settlement Class were timely submitted. As a result of the later request for exclusion, the Toyoda Gosei Settlement Amount has been reduced to \$14,250,000. Under the terms of the Tokai Rika settlement, the settlement amount of \$4,000,000 remains unchanged notwithstanding the three requests for exclusion. No objections were filed to either of the proposed settlements, to the proposed plan for distribution of settlement funds, or to Settlement Class Counsel’s request for an award of attorneys’ fees and reimbursement of litigation costs and expenses, or the request for incentive awards to the Class Representatives.

Settlement Class Counsel respectfully submit that the extremely low number of opt-outs and the complete absence of objections militate strongly in favor of approval of the proposed settlements, the proposed plan for distribution of settlement funds, and the requests for attorneys' fees and litigation costs and expenses, and incentive awards to the Class Representatives.

**I. DISSEMINATION OF NOTICE TO THE CLASS**

Pursuant to the Court's Notice Order, on May 16, 2018, Epiq Class Action & Claims Solutions, Inc. ("Epiq"), the Notice and Claims Administrator retained by Direct Purchaser Plaintiff, mailed 1,342 copies of the Notice of Proposed Settlements of Direct Purchaser Class Action with Tokai Rika and Toyoda Gosei Defendants and Hearing on Settlement Approval and Related Matters (the "Notice") to potential Settlement Class members by first class mail, postage prepaid. Declaration of Ryan Kao, Senior Project Manager for Epiq. Exhibit 1 at ¶ 6. Epiq also re-mailed returned notices for which updated addresses were obtained. *Id.* at ¶ 7. In addition, a copy of the Notice was (and remains) posted online at [www.AutoPartsAntitrustLitigation.com](http://www.AutoPartsAntitrustLitigation.com), a website dedicated to this litigation. *Id.* at ¶ 9.

Also in accordance with the Notice Order, the Summary Notice of Proposed Settlements of Direct Purchaser Class Action with Tokai Rika and Toyoda Gosei Defendants and Hearing on Settlement Approval and related Matters (the "Summary Notice") was published in the national edition of *The Wall Street Journal* and in *Automotive News* on May 21, 2018. *Id.* at ¶ 8.

Notice to the Tokai Rika and Toyoda Gosei Settlement Classes under Fed. R. Civ. P. 23 has, therefore, been provided as ordered by the Court.

**II. ABSENCE OF OBJECTIONS TO THE PROPOSED SETTLEMENTS, THE PROPOSED DISTRIBUTION PLAN, AND REQUESTS FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARDS TO THE CLASS REPRESENTATIVES**

The Notice advised that any objection to the proposed settlement, the proposed plan for distribution of settlement funds or to Settlement Class Counsel's requests for an award of attorneys' fees and litigation costs and expenses or incentive awards to the Class Representatives had to be filed with the Clerk by July 11, 2018, with copies mailed to Settlement Class Counsel and to counsel for the Settling Defendants.

As of the date of the filing of this Report, no objection to either of the proposed settlements, the distribution plan, or to the fee and expense<sup>1</sup> or incentive award requests has been filed with the Court or received by Settlement Class Counsel.

**III. REQUESTS FOR EXCLUSION**

The Notice further advised that requests for exclusion from the Tokai Rika and Toyoda Gosei Settlement Classes had to be mailed to Settlement Class Counsel and to counsel for the Settling Defendants, postmarked no later than July 11, 2018. Three requests for exclusion from the Tokai Rika Settlement Class and one request for exclusion from the Toyoda Gosei Settlement

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<sup>1</sup> As of April 30, 2018, Plaintiff's Counsel's lodestar, based upon historical rates, was \$8,544,289.74. Direct Purchaser Plaintiffs' Brief in Support of Their Motion for an Award of Attorney's Fees, Litigation Costs and Expenses, and Incentive Awards for the Class Representatives, at 10 (the "Fee Brief") (2:12-cv-00601, Doc. No. 164). Since that date, Plaintiff's Counsel have continued to prosecute this litigation by, among other things, drafting the final settlement approval submissions and overseeing the dissemination of notice to members of the Settlement Class in accordance with the Notice Order. As a result of this continued effort, as of July 31, 2018, Plaintiff's Counsel's combined lodestar was \$8,697,966.49. By Order dated July 15, 2015, the Court awarded 25% of the \$42,100,000 common fund (\$10,525,000) created by the Autoliv and TRW settlements, which was a lodestar multiplier of 2.09. (2:12-cv-00601, Doc. No. 128). Were the Court to award a fee of 30% of the total Toyoda Gosei and Tokai Rika combined settlement amounts of \$18,250,000 less litigation expenses of \$32,847.34, the overall multiplier on fees awarded for all four settlements to date (Autoliv, TRW, Toyoda Gosei and Tokai Rika) would be approximately 1.84 times lodestar.

Class were timely submitted and have been received by Settlement Class Counsel as of this date. See Exhibit 1 at ¶ 11. See also Exhibits 2 and 3. As set forth in the preliminary approval motion, the Brief in Support of Direct Purchaser Plaintiffs’ Motion for Final Approval of Proposed Settlements with Tokai Rika and Toyoda Gosei Defendants (the “Final Approval Brief”) (2:12-cv-00601, Doc. No. 163), and the Notice, the \$34,000,000 Toyoda Gosei settlement was subject to reduction due to requests for exclusion. As a result of the request for exclusion from the Toyoda Gosei Settlement Class, the Toyoda Gosei Settlement Amount has been reduced to \$14,250,000. Under the terms of the Tokai Rika settlement, the settlement amount of \$4,000,000 remains unchanged notwithstanding the three requests for exclusion.

Settlement Class Counsel respectfully submit that, for the reasons set forth in the Final Approval Brief, each of the Tokai Rika and Toyoda Gosei settlements, is fair, reasonable and adequate under the relevant criteria, and warrant final approval.

#### **IV. THE REACTION OF MEMBERS OF THE SETTLEMENT CLASS SUPPORTS APPROVAL OF THE SETTLEMENT AND THE REQUEST FOR AN AWARD OF FEES AND EXPENSES**

The reaction of the class has been recognized repeatedly by courts within this Circuit and elsewhere as a factor in evaluating the fairness, reasonableness, and adequacy of a proposed settlement. See, e.g., *Sheick v. Auto. Component Carrier LLC*, No. 2:09–cv–14429, 2010 WL 4136958, at \*22 (E.D. Mich. Oct. 18, 2010) (“scarcity of objections – relative to the number of class members overall – indicates broad support for the settlement among Class Members.”); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 527 (E.D. Mich. 2003) (“That the overwhelming majority of class members have elected to remain in the Settlement Class, without objection, constitutes the ‘reaction of the class,’ as a whole, and demonstrates that the Settlement is ‘fair, reasonable, and adequate.’”); *In re Delphi Corp. Sec., Deriv. & “ERISA” Litig.*, 248 F.R.D. 483,

499 (E.D. Mich. 2008) (small number of opt-outs or objections is indicative of the adequacy of the settlement).

Individual notice of the proposed settlements was mailed to 1,342 potential Settlement Class members identified by Defendants, published in *Automotive News* and in *The Wall Street Journal*, and posted on-line. The low number of opt-outs and total absence of objections militates strongly in favor of approval of the proposed settlements and the requests for attorneys' fees, litigation costs and expenses, and incentive awards to the Class Representatives.

**V. CONCLUSION**

Based upon the foregoing, and for the reasons set forth in Direct Purchaser Plaintiff's Final Approval Memo and Fee Brief, it is respectfully requested that the Court grant final approval of the proposed Tokai Rika and Toyoda Gosei settlements, the proposed plan for distribution of settlement funds, and the requests for attorneys' fees and litigation costs and expenses, and incentive awards to the Class Representatives.

DATED: September 12, 2018

Respectfully submitted,

/s/David H. Fink

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 12, 2018, I electronically filed the foregoing paper with the Clerk of the court using the ECF system which will send notification of such filing to all counsel of record registered for electronic filing.

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